IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition Nos.2554 of 2002 and 1351 of 2004

Writ Petition No.2554 of 2002:

1. Charles David
2. M.Chittibabu
3. P.Panchatcharam
4. P.Velusamy
5. P.O.Samuvel
6. K.K.Karthikeyan
7. K.Krishnaia Chetty
8. M.Murgan
9. M.Mani
10. M.Subramaniam
11. C.Perumal
12. I.K.Krishnan
13. M.Terrance
14. S.K.Sendarazan
15. P.M.Narayanasamy
16. M.Abdul Razeeth
17. N.Paneerselvam
18. B.Balakrishnan
19. S.Meenatchisundaram
20. D.Kasi
21. K.Nagooran ... Petitioners

Vs.

1. The Union of India,
   rep.by the Railway Board,
   rep.by the Chairman,
   Rail Bhawan, New Delhi-1.

2. The Central Administrative Tribunal,
   Madras Bench,
   rep.by its Registrar,
   Chennai-104. ... Respondents

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Writ Petition No.1351 of 2004:

1. P.R.Parthivanan
2. A.Baskaran
3. P.Venkatesan
4. M.Dhanasekeran
5. M.Rengaiah
6. D.Manoharan
7. K.R.Janakiraman
8. D.Perumal
9. S.Thankachan
10. K.Balasubramanian
11. D.Subramanian
12. R.Krishnan
13. R.Krishna Pillai
14. Mrs.Sujina Mary
15. Mrs.Lilly Babu ... Petitioners

Vs.

1. Union of India,
   rep.by The Secretary to Government of India,
   Ministry of Railways, New Delhi.

2. The Chief Personnel Officer,
   Southern Railway, Park Town,
   Chennai-600003.
3. The Registrar,
   Central Administrative Tribunal,
   Chennai. ... Respondents

* * *

W.P.No.2554 of 2002 has been filed praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in its order dated 23.8.2001 made in r.A.No.62 of 2000 and M.a.No.75 of 2001 in O.a.No.646 of 1991, quash the same and consequently direct the first respondent to treat the petitioners as Open Line Casual Labourers and grant them all the benefits available to the Open Line Casual Labourers.

W.P.No.1351 of 2004 has been filed praying to issue a Writ of Certiorari to call for the records relating to the order passed in O.A.No.532 of 2002 by the Central Administrative Tribunal, Chennai Bench, dated 11.4.2003 and quash the same.

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For Peitioners in WP No.2554/2002 : Mr.Karthik for R.Parthiban

For Petitioners in WP No.1351/04 : Mr.M.A.Sadanand

For Respondents in both WPs : Mr.Vellaichamy for R1 & R2

COMMON ORDER

ELIPE DHARMA RAO, J.

The question involved in these two cases is 'whether the petitioners are Open Line Casual Labourers or not'. If they are found to be Open Line Casual Labourers, they would become entitled to count their past service before regularisation for pensionary purpose and other benefits.

2. The brief facts of cases in hand are that earlier, the petitioners in W.P.No.2554 of 2002 have filed Original Application No.646 of 1991 before the Tribunal praying a direction to the respondents to take into account the services rendered by them on casual basis for pensionary purpose and other benefits. Their case was that they were engaged as Casual Labourers and thereafter, they were appointed as regular Railway employees between 1973 and 1980. It is stated that in the case of casual labourers in the Open Line after six months of continuous service, they are treated as temporary railway servants and half of their period as casual labour would be counted for the purpose of retiral benefits. The Ministry of Railways, in their letter No.E(NG)II/78/CD/12, dated 4.10.1980 made it clear that half of the period of service put in by such casual labourers of Open Line after attaining temporary status would be taken into consideration to count as qualifying service for the purpose of full retiral benefits on their eventual absorption in regular employment, but this benefit was not extended to casual labourers on the projects and had been specifically excluded.

3. It is also stated that by later communications dated 1.6.1984 and 11.9.1986, the said privilege of counting half of the period of casual service for retiral benefits was extended to casual labourers on the project lines with effect from 1.1.1984 and those employees, who had been absorbed as regular railway servants prior to 1.1.1984 were denied the benefit of the said privilege. Earlier one batch of employees have filed O.A.No.485 of 1989 before the Tribunal seeking to extend the said privilege to casual labourers on the projects who had been absorbed as regular railway employees prior to 1.1.1981 and

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the Tribunal by the order dated 8.2.1991 had extended the said privilege to the applicants therein.

4. We are able to understand that granting temporary status to project casual labourers was introduced in the year 1986 with retrospective effective from 1.1.1981 on the basis of the judgment of the Honourable Supreme Court of India in INDER PAL YADAV AND OTHERS vs. UNION OF INDIA AND OTHERS [(1985) 2 SCC 648] and the respondents have taken the decision in the Railway Board's Letter No.E(NG) II/78/CL/12, dated 14.12.1980, granting temporary status to Project Casual Labourers with effect from 1.1.1981 and reckoning 50% of their temporary status service from 1.1.1981 upto the date of regularisation as qualifying service for pensionary benefits. The stand of the respondents in the said O.A. before the Tribunal was that since the applicants had been absorbed in regular service prior to 1.1.1981, they were not eligible for the said benefits. The Tribunal, observing that temporary status was only a concept, having no formal existence like promotion or conformation and that it was merely acquired by efflux of time and not granted or conferred on individuals by the Railways and thus it was discriminatory on the part of the Railways to deny the benefit to those who had been absorbed prior to 1.1.1981 and further observing that the applicants had been working as Project Casual Labourers on continuous basis, except for certain artificial breaks in respect of some of them and that all of them have been absorbed as regular railway employees before 1.1.1981, has allowed the said Original Application.

5. Against the said order in O.A.No.485 of 1989, Civil Appeals were preferred by the respondents and the Honourable Apex Court has set aside the judgment of the Tribunal by its judgment reported in 1998 (5) SCC 11 [UOI vs. K.G.RADHAKRISHNA PANICKER AND OTHERS]. Against the order passed by the Tribunal in the case on hand, the respondents filed SLP.No.2047 of 1999 before the Honourable Supreme Court and the same was disposed of by order dated 22.3.1999, following the decision in 1998 (5) SCC 11 in which it was held that the benefit of past service as casual labourers will apply only to casual labourers working in open line and not to casual labourers working on a project. At that time, a representation was made before the Honourable Supreme Court that the petitioners are really working as casual labour in the Open Line and therefore, treating them as Project Casual Labourers by the orders of the Tribunal is not correct and in view of the said submission, a direction was issued by the Honourable Supreme Court, which reads as follows:

> "Learned counsel for the respondents contends that they are all open line casual labourers and the Tribunal has wrongly described them as project casual labourers. It is also stated that an application for correction was not made

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before the Tribunal as the Tribunal had granted relief to both categories of casual labourers. If that be so, they may approach the Tribunal for correcting the factual error in the judgment. So far this Court is concerned, the relief on that point cannot be given to the respondents. In view of the above, the appeal is disposed of in the above terms."

6. Pursuant to this, the petitioners in W.P.No.2554 of 2002, have filed R.A.No.62 of 2000 and also filed M.A.No.75 of 2001, to clarify the order of the Tribunal, contending that all of them are casual labourers in the Open Line and even in the Original Application, they have only stated that they are working only in the Open Line and not as project labourers. The Tribunal, by the impugned order, has dismissed the said R.A. and M.A. resulting in filing of W.P.No.2554 of 2002. The Tribunal has passed the order in O.A.No.532 of 2002, dismissing the said Original Application, following the above said order in R.A. and M.A., resulting in filing of W.P.No.1351 of 2004. Since both these matters raise a common question, as has been extracted supra, both these matters are taken up together and this common order is passed.

7. There is no denial of the fact that all these petitioners were engaged as casual labour by the respondents between 1961 and 1971 and they were absorbed in regular posts sometime between 1973 and 1980 as Khalasis and most of them are retired now. It is also not in dispute that their services are governed by the Indian Railway Establishment Manual. The term 'casual labour' was defined in sub-para (a) of Para 2001 of the Indian Railway Establishment Manual as follows:

"Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short period or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily like to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.

a. Casual Labour (Open Line):-

Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day to day working of the Railway system. This includes labour requires for unloading and loading of materials, special repair and maintenance of track and other structures, supplying drinking water to passengers during summer months, (recoupment of man-days lost on account of absenteeism), patrolling of tracks etc. Casual

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Labour so engaged in the operation and maintenance of railway system is referred to as open line casual labour, as distinct from Project Casual Labour, described in Para (b) infra.

b. Casual Labour (Project): Casual Labour are also engaged on Railway for execution of railway projects, such as new lines, doubling, conversion, construction of building, track renewals, route relay interlocking, railway electrification, setting up of new units etc. Casual Labour so engaged are referred to as 'Project Casual Labour'."

8. Note (1) of sub-para (iii) of Para 2001 of the Indian Railway Establishment Manual reads as follows:

"The term 'same type of work' should not be too rigidly interpreted so as to cause undue hardship to casual labour by way of break in service because of a slight change in the type of work in the same unit. The terms 'same type of work' should be implemented in spirit as well as in letter and no casual labour should suffer in this matter by rigid interpretation of the term...."

9. The petitioners in their affidavit, have asserted that they have been performing functions of regular employees and they were looking after the signalling work, which is an Open Line work in their casual employment and they were continuously performing their duties and as such, they have put in 10 to 14 years of service as casual labourers in open line before being appointed on regular basis. The petitioners further submitted that they were entrusted with the signal maintenance work, which was basically a day-to-day work. They were to carry out maintenance of signalling, lighting lower quadrant to upper quadrant, mechanical signalling and electrical signalling. They were utilised for day-to-day maintenance work and for providing additional facilities in signalling and thus they all were working in Open Line establishments.

10. But, the respondents have denied this aspect by filing a counter, further submitting that the petitioners are not working in Open Line establishment and therefore, they are not entitled to the relief sought for.

11. As has already been adverted to supra, the fact that the petitioners were engaged as casual labour by the respondents is not in dispute. When, on the part of the petitioners, they assert that work was extracted from them in open line establishment and only to deny them their due, the respondents are taking such a different stand, the respondents have simply stated that the petitioners have

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not worked in open line establishment with nothing on record to substantiate their stand.

12. To unearth the truth, when we directed the respondents to produce the records as to in what line the petitioners were working as casual labourers, the respondents simply replied that no records are available. It is sad to note that even though the provisions of the Indian Railway Manuel are so generous that 'no casual labour should suffer in this matter by rigid interpretation of the term same type of work', the respondents, to deprive a favourable legislation in favour of the petitioners, a fourth grade employees, who have dedicated their better part of life to serve the Railways, have taken such a stand without any material to substantiate their case. This Court wonders, when, even according to the assertion of the respondents, they do not have the records, as to in what line/establishment the petitioners have worked, how could the respondents file a counter affidavit stating that the petitioners were engaged only in Project Works. From this, a legal presumption would arise that the petitioners were working only in Open Line and the respondents are very rigid in their mind, as opposed to the beneficial legislation, to somehow see that the benefits should not be flown to the petitioners.

13. It is admitted on the part of the respondents also that in the casual labour cards issued to the petitioners, there is no mention that they are engaged in project works. In ROBERT D'SOUZA vs. EXECUTIVE ENGINEER, SOUTHERN RAILWAY AND ANOTHER [(1982) SCC (L&S) 124], it has been clearly held that every construction work does not imply project and the expression 'project' is very well known in a panned development, that if a casual labourer becomes surplus on completion of project, there was no necessity to absorb him...' Therefore, the contention raised by the respondents that all the construction units are project establishments based on a letter issued by them in No.P(RT)407/P/Vol.V, dated 4.5.1965 is untenable in view of such a categorical finding rendered by the Honourable Apex Court. Further, the contention of the respondents that DST/W are not engaged in day-to-day works (open line) is false and contrary to the findings rendered by the Ernakulam Bench of the Central Administrative Tribunal in O.A.No.849 of 1990, further holding that DSTE/W is a permanent open line establishment which finding became final, since the appeals filed upto the Honourable Supreme Court are dismissed. As could be seen from the letter dated 6.6.1995 of the Sr.DSTE/W/Guntakal, similarly situated persons in Guntakal Division were given benefits as admissible to Open Line causal labourers. Thus, it is clear that there is no strict rule or straight jacket formula being followed by the respondents and they want to water down the claim of the petitioners at any cost. The respondents should not have taken inconsistent stands to suit their convenience, depending upon the facts and circumstances of each case,

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thus depriving the innocent workmen of their legal rights and this type of practice of taking inconsistent stands, without any supporting evidence, by the respondents should be deprecated in the larger interest of workmen.

14. As could be seen from the records, the petitioners were entrusted with the signal maintenance work and they were directed to carry out maintenance of signalling, lighting lower quadrant to upper quadrant, mechanical signalling and electrical signalling. According to sub-para (a) of Para 2001 of the Indian Railway Establishment Manual, as has been extracted supra, 'Casual Labour so engaged in the operation and maintenance of railway system is referred to as open line casual labour'. There cannot be any doubt that the signalling unit of the Railways falling within the 'operation and maintenance of railway system' and is a work of permanent nature unlike other project works, which would come to a close with the completion of the project entrusted. Therefore, it definitely falls within the definition of 'work of permanent nature' and therefore, the casual labour attending such permanent nature of work are undoubtedly the Casual Labour working in Open Line. Therefore, there is no hesitation for us to hold that the petitioners are the Casual Labour working in Open Line.

15. Further more, as could be seen from the materials placed on record, the petitioners were transferred from one Unit/Division/Station to another, which could never happen in case of a project worker, who would be engaged only for a particular project and their employment will be over with the closure of the said project. But, in the case of the petitioners, they were engaged continuously before their regularisation in various Units/Divisions/Stations unlike the Project Labour.

16. For all these reasons, when at no point of time, the petitioners were treated as Casual Labourers working on a project, and when there is no evidence produced on the part of the respondents to substantiate their stand that the petitioners were working only as Casual Labourers on a project and when there are abundant materials placed on record by the petitioners that they, all through, were working only in Open Line, it must be held that the petitioners are working only in Open Line and thus they are entitled to the relief sought for. But, the Tribunal, without appreciating the materials placed on record in their proper perspective has arrived at an erroneous conclusion to dismiss the claim of the petitioners, resulting in miscarriage of justice, thus calling for our interference.

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In the result, both these writ petitions are allowed, as prayed for. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Rao

To

1. The Secretary to Government of India,
   Union of India,Ministry of Railways, New Delhi.

2.The Chief Personnel Officer,
   Southern Railway, Park Town,
   Chennai-600003.

3. The Registrar,
   Central Administrative Tribunal,
   Chennai.

4.The Chairman,
 Union of India,
   rep.by the Railway Board,
   Rail Bhawan, New Delhi-1.

+1cc to Mr.R.Parthiban, Advocate Sr 62701
+1cc to Mr.N.A.Ravindran, Advocate Sr 62760

AKR (CO)
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